

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Revision No. 832 of 2019

1. Shankar Singh					
2. Sortho Singh	Petitioners	
	Versus				
The State of Jharkhand	Opp. Party	

CORAM: HON'BLE MR. JUSTICE GAUTAM KUMAR CHOUDHARY

For the Petitioner	: Mr. Kundan Kumar Ambastha, Advocate Mr. Sumit Kumar, Advocate Mr. Kislaya Prasad, Advocate Mr. Anurag Chandra, Advocate
For the State	: Ms. Priya Shreshtha, Special P.P.

Order No. 12 Dated : 03.07.2024

1. This criminal revision petition is preferred against the judgment of conviction and sentence passed in Criminal Appeal No. 29 of 2017 whereby and whereunder the petitioners have been convicted and sentenced under Sections 406 and 409 of the IPC.

2. As per the case of the prosecution set out in the F.I.R. lodged by the Block Education Extension Officer, Simdega, both these petitioners were entrusted with Rs. 3,78,250/- on 07.02.2007 and 30.03.2007 for construction of a school building in the financial year 2006-07. The amount was transferred in the account of the accused persons and the building was not completed by the time F.I.R was lodged on 07.04.2011.

3. Petitioner-Shankar Singh was Para Teacher and Sortho Singh, President of Village Education Committee, Baralanga, District Simdega.

4. Altogether 13 witnesses were examined on behalf of the prosecution and relevant documents including measurement book and statement of Bank account have been adduced into evidence and marked as exhibits. After prosecution evidence, the statement of the accused was recorded under Section 313 Cr.P.C. and the building has been constructed and now children are residing in the said school. Defence is of innocence.

5. Learned trial Court acquitted the accused persons under Section 420 of the IPC and has convicted both of them under Sections 406 and 409 of the IPC. The judgment of conviction has been affirmed in appeal.

6. It is submitted by the learned counsel on behalf of the petitioners that there is apparent illegality in the judgment of conviction as petitioners could not have been convicted for the offence both under Sections 406 and 409 of the IPC. Section 409 is a major Section for criminal breach of trust committed by public servant,

whereas section 406 of the IPC is for the minor offence of criminal breach of trust simpliciter. Therefore, under Section 71 of the IPC read with Section 222 of the Cr.P.C. in the event of conviction under the major section, the conviction under minor Section uncalled for.

7. It is further argued that the work agreement has not been exhibited on behalf of the prosecution. As per the prosecution evidence, the work had been completed and the only allegation is that that there was delay in execution of the work, but unless the work agreement is brought on record, it cannot be said that petitioners willfully delayed execution of work. In this regard, reference is drawn to the testimony of P.W.-1 and other witnesses who have deposed that construction of the building has been completed and students are now studying in the said school.

8. It is argued by the learned Special P.P. that entrustment has been proved of Rs. 3,78,250/- for construction of the work and there is no denial of the fact. Furthermore, the witnesses have consistently stated that work was not completed by the time the F.I.R. was lodged. However, the learned counsel on behalf of the State failed to show any chit of paper with regard to the time frame, within which the work had to be completed. Witnesses have also not stated in the oral evidence that on what time the said work was completed.

9. Under the circumstance, learned Courts below appear to have drawn an inference of delay in execution of the work agreement, merely on the basis of conjecture. Unless there is oral or documentary evidence to show that construction of the school was to be completed within a particular stipulated time, such an inference cannot be drawn by the Court that there was delay in execution of the work, and the amount had been misappropriated.

10. In order to make an offence of criminal breach of trust, prosecution is to establish that the property was misappropriated by the person with whom the same was entrusted in violation to the mode in which trust was to be discharged. In the absence of any positive evidence on work agreement, this Court is of the view that the conviction of the petitioners under the offence charged, is not sustainable and is accordingly set aside and the petitioners are acquitted of the charges and they are directed to be released forthwith from the custody. Sureties are discharged from the liabilities of their bail bonds.

Criminal Revision petition is allowed. Interlocutory Application, if any, is disposed of.

(Gautam Kumar Choudhary, J.)